

IN RE LORRAIN ESME OSMAN & IN RE AN APPLICATION
FOR A WRIT OF HABEAS CORPUS AD SUBJICIENDUM

QUEEN'S BENCH DIVISION

LORD JUSTICE LEGGATT

JUSTICE NOLAN

[ROYAL COURTS OF JUSTICE NO. CO/252/90]

20 JUNE 1990

CRIMINAL PROCEDURE: *Habeas Corpus - Extradition to Hong Kong - Extradition Act 1989 [UK] - Fugitive Offenders Act 1967 [UK], s. 7(5) - Whether charges against applicant made in good faith and in the interests of justice - Whether extradition to Hong Kong would be unjust and oppressive - Whether applicant entitled to discovery of documents - Whether documents protected against discovery.*

The applicant, Lorrain Esme Osman, had been in custody for over four and a half years since his arrest on 6 December 1985 on a provisional warrant. His extradition had been requested by the Hong Kong Government to answer charges and to stand trial in Hong Kong for 42 alleged offences of fraud, etc., committed between 1979 and 1983.

The applicant now applies, in his fourth attempt, for *habeas corpus* under the provisions of the Extradition Act 1989. He alleges that it would be unjust and oppressive to return him to Hong Kong because of various reasons. He said that all the key witnesses for the defence are in Malaysia and they might not be induced voluntarily to go to Hong Kong, whereas they would be compellable to give evidence had proceedings been taken against him in Malaysia. He said that many prosecution witnesses are in Malaysia and they would generally be required by the prosecution to give their evidence by way of depositions. If that occurs, they will not be cross-examined in his presence or in the presence of the jury which tries him. Further, the applicant said that there are many important documents which he would wish to rely and these are held in Malaysia. It would be difficult to procure their production for a trial in Hong Kong. Finally, (this being the applicant's major complaint for the purpose of this hearing) the accusations made against him had not been in good faith and in the interests of justice.

The applicant also alleged that the Hong Kong Government instituted criminal proceedings against him because of political pressure from the Malaysian Government. The applicant said that before the Malaysian Government applied pressure against the Hong Kong Government, the Commercial Crimes Bureau of the Hong Kong police had already decided, after concluding their investigations into the Carrian Group and BMFL, not to continue with their investigation - at any rate not to proceed with any prosecution of BMFL. When the Hong Kong Government later decided to prosecute the applicant in 1985, they were in fact reversing their previous decision.

The applicant also applied for an order that the Hong Kong Government and the Foreign and Commonwealth Office produce for inspection by the Court various documents listed in two schedules appended to the notice of motion. The respondents resisted this, and in support thereof two certificates claiming public interest immunity have been tendered in Court.

The principal issue before the Court is whether the applicant is entitled to discovery of the documents referred to in his notice of motion.

a Held:

[1] The prosecution incontrovertibly affects the affairs of a deposit taking company licensed in Hong Kong, which operated and made loans there to Hong Kong companies. That being so, the Hong Kong Government has the jurisdiction to prosecute the applicant.

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[2] Once it is established that the Hong Kong Government has jurisdiction to prosecute the applicant, it becomes exceedingly difficult to impugn either the decisions to prosecute or the motive with which that decision was taken.

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[3] Since there is evidence that offences were committed in Hong Kong, there is on the face of it a legitimate public interest in prosecuting the applicant there in respect of these offences. In these circumstances, it would matter not if the Malaysian Government in fact had a ulterior political motive in having prompted the renewed investigation in Hong Kong of the applicant's conduct.

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[4] The test for ordering discovery of documents, as sought here by the applicant, is whether the documents concerned would be likely to advance the applicant's case, the onus is on the applicant to demonstrate this.

[5] The application cannot be made for the purpose of making good any defects in the applicant's evidence, nor for the purpose of studying the respondents' documents in order to see if there is anything in them that will help the applicant's case.

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[6] Having perused the documents which the applicant seeks to use as a springboard for further discovery, the Court finds that there is nothing to show or suggest that the Hong Kong Government has any other motive in proceeding against the applicant. None of the documents suggest that the accusations against the applicant was not made in good faith in the interests of justice.

[Both applications dismissed.]

Case referred to:

The Union of India v. Narang [1978] AC 247

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Legislation referred to:

Extradition Act 1989 [UK], s. 11(3)

Fugitive Offenders Act 1967 [UK], ss. 7(5), 8(3)

Interpretation Act 1989 [UK], s. 16

For the applicant - M. Thomas QC, Mark H. Lomas & J. Mok; M/s. Evershed Wells & Hind, London EC4

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For the Governor of Pentonville prison - Kevin De Haan; M/s. Crown Prosecution Service, London SW1

For the government of Hong Kong - Clive Nicholls QC & Graham Grant; M/s. Macfarlanes EC4

For the Foreign and Commonwealth Office - Stephen Richards; M/s. Treasury Solicitor SW1

JUDGMENT

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Lord Justice Leggatt:

The applicant, Lorrain Esme Osman, is in course of making his fourth application to this Court in connection with his resistance to a request from the Government of Hong Kong for his extradition on charges of fraud. His latest substantive application is for *habeas corpus* under the provisions of the Extradition Act 1989.

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He has been committed to custody pursuant to an order made on 1 June 1987 under s. 7(5) of the Fugitive Offenders Act 1967 by the Chief Metropolitan Magistrate in respect of 42 alleged offences of conspiracy to defraud and steal, theft, false accounting and other offences

of dishonesty covering a period between 1979 and 1983. He has been in custody for a period of over four and a half years, since 6 December 1985, when he was arrested on a provisional warrant. **a**

In essence the applicant submits that it would be unjust and oppressive to return him to Hong Kong for trial because of the location, because of his race, he being a Malaysian national, because of the adverse publicity, because of the delay, and because the accusation is not made in good faith in the interest of justice, the latter complaint being the one which for present purposes is material. **b**

This application is for an order that the Hong Kong Government and the Foreign and Commonwealth Office produce for inspection by the Court various documents listed in two schedules appended to the notice of motion, and for a letter of request in relation to a Hong Kong witness called Philip Layton. **c**

In the second of the two schedules to which I have referred the applicant specifies two classes of documents which he claims should be produced by the Hong Kong Government or by the Foreign and Commonwealth Office for inspection by the Court. The first such class relates to documents dealing with the investigation, prosecution and extradition of the applicant passing between the Hong Kong Government, either directly or through the Attorney-General's chambers, the United Kingdom High Commissioner in Malaysia and the Malaysian Government; and the second class is of documents of the same kind passing between the United Kingdom Government, the Hong Kong Government, either directly or through the Attorney-General's chambers, and the Malaysian Government. **d**

The documents which are the subject of the first schedule are explained in a supporting affirmation by the applicant of 9 April 1990, in which he says that his *habeas corpus* application is based upon facts revealed as a result of the disclosure by the Foreign and Commonwealth Office on 21 October 1989 of confidential telexes passing between the Hong Kong Government, the High Commissioner in Malaysia, and the Foreign and Commonwealth Office in London. According to the applicant those documents reveal a strong *prima facie* case that the accusations against him were not made in good faith in the interests of justice. **e**

He points to the fact that the documents in schedule 1 of the notice of motion fall into three categories. The first consists of documents referred to in the confidential telex messages which were disclosed on his previous application for *habeas corpus*. The second category concerns the involvement of a person called Warwick Reid in the granting to immunity to a person called Ibrahim Jaafar, who is the chief prosecution witness against the applicant. **f**

The applicant affirms that Mr. Reid was recently deported by the Philippines Government for travelling on false documents and sent back to Hong Kong where he is said to be in the custody of the Independent Commission against Corruption to which I shall refer as ICAC. **g**

The applicant says, and invites the Court to adopt the point of view, that by virtue of Mr. Reid's initial flight, his conduct in the services of the Crown in the Attorney-General's office may be presumed to be corrupt. Mr. Thomas, who appears in this Court for the applicant, has told the Court that, in consequence of a plea of guilty, Mr. Reid now stands convicted of an offence, although the particulars of it are not before the Court. **h**

The third category of documents which are the subject of schedule 1 of the notice of motion relates to a complaint filed with the ICAC in Hong Kong by either the Bank Bumiputra Malaysia BHD or Bumiputra Malaysian Finance Ltd., to which I shall refer respectively as BBMB and BMFL. Those entities, as will appear, were concerned in the business that took the applicant to Hong Kong for relevant purposes. **i**

a Also before the Court is the letter of request relating to Mr. Layton. It is said that he is able to give relevant information about the investigations conducted in Hong Kong that concern the applicant.

b There is a dispute between Counsel about which of two statutory provisions govern the application pending before the Court for *habeas corpus*. Mr. Thomas contends that the relevant provision is s. 11(3) of the Extradition Act 1989. Mr. Nicholls, on the other hand, contends that the governing provision is, by virtue of the Interpretation Act 1989, s. 16, still the s. 8(3) of the Fugitive Offenders Act 1967.

c The Court originally accepted to determine the issue as to which of those provisions is applicable, or will be applicable, for purposes of the substantive motion; but it appears to us that it is unnecessary, and perhaps even undesirable, for purposes of the present application, to decide that issue now. It is unnecessary because it is common ground that one or other of the statutory provisions applies, and it is also common ground that there is no material difference between them. It is perhaps undesirable to determine that issue now because we understand that a considered judgment is about to be given in Hong Kong on the topic, and in this jurisdiction it seems to us preferable to leave it to the Court which hears the substantive motion to determine this issue with such benefit as it may derive from the persuasive authority of the Hong Kong Court.

d The material parts of the statutory provisions are identical. They provide that a person is to be discharged from custody if it appears to the Court that, because the accusation against him is not made in good faith in the interests of justice, it would, having regard to all the circumstances, be unjust or oppressive to return him.

e It is right to mention that the passage relating to the accusation against him not being made in good faith is the third of two paras. (a), (b) and (c) in the subsection which provide circumstances in which the Court must be satisfied before it can give consideration to whether it would be unjust or oppressive to return the applicant.

f The first of those paragraphs, para. (a), refers in the 1967 Act, but not in the 1989 Act, to the trivial nature of the offence being one of which, in the language of the 1967 Act, he is accused or was convicted. I mention that merely for the relevance it may have to the determination of what is the nature of the accusation referred to in para. (c).

g It appears from *The Union of India v. Narang* [1978] AC 247, in a passage from the speech of Lord Edmund-Davies at p. 283 letter B that the proper approach of the Court is the one that I have already indicated, namely, first to determine whether it appears to the Court that any of the circumstances contemplated by the ensuing three paragraphs of the subsection is satisfied before proceeding to consider whether, having regard to all the circumstances, it would be unjust or oppressive to return an applicant.

h The issue in relation to which disclosure of documents is sought is that identified in para. (c) which I have read. The question will be for the Court whether it appears that the accusation against the applicant is not made in good faith in the interests of justice.

i Mr. Thomas contends that the person who makes the accusation and who is contemplated by the act is the complainant, in this case BBMB; or alternatively, that it is the Attorney-General's chambers, presumably on the footing that some member of those chambers may be taken to have given the authority for the necessary information to be sworn. According to Mr. Thomas's argument, the accuser may be that individual who turns out to swear the

information. It seems to me that all three suggestions are, in the circumstances contemplated by the act, whichever it is applicable, implausible. I accept Mr. Nicholls' submission that the accusation relates to the allegations made in this instance by the Government of Hong Kong. **a**

As it chanced, contrary to the usual practice, there is before the Court the letter of request signed by the Governor-General of Hong Kong, in which at the outset the phrase occurs:

The said Lorrain Esme Osman - that is the applicant, and another person is named - are accused in Hong Kong of offences of Conspiracy to Defraud, contrary to Common Law, Conspiracy to Steal, contrary to Common Law and Theft Ordinance; Accepting Advantages... **b**

The accusation may be regarded as being epitomised by the charges that have been brought against the applicant, but it is not confirmed to them. The term no doubt extends to supporting evidence, and it may well render relevant the motivation of the accusing Government. So much then for the approach dictated by the relevant statutory provision. **c**

It is convenient at this juncture to mention that, with the concurrence of Counsel, we have heard first the question of whether, disregarding claims made on this application both by the Hong Kong Government and on behalf of the Foreign and Commonwealth Office for public interest immunity, the applicant is entitled to discovery of the documents referred to in his notice of motion, or any of them. Both Mr. Nicholls, on behalf of the second respondent, and Mr. Richards, for the Foreign and Commonwealth Office, have expressed reservations about the propriety of the Court looking at documents in respect of which such a claim has been made before determining the validity of the claim. It seemed to us that to ignore documents which are already properly in the possession of the applicant, and which he thinks may help him, for the purpose of seeing whether they have the significance in the context of further discovery for which he contends, would be wholly artificial as well as unsatisfactory, especially since, if we are against the applicant on his right to discovery in the first place (or at what Mr. Thomas called the threshold) there will be no need to consider any issue of public interest immunity. **d**

As background to the application Mr. Thomas helpfully recounted what had befallen in Hong Kong and elsewhere before the present charges were preferred against the applicant. That background is usefully summarised in the draft letter of request relating to Mr. Philip Layton. It recounts how as long ago as 1965 the applicant was instructed by the then Deputy Prime Minister to incorporate BBMB, which was a bank established in Malaysia and funded by the Malaysian Government, to carry out the policies of the ruling political party. **e**

On the Deputy Prime Minister's instructions the applicant became a subscriber member and first director of that bank. He himself apparently had no political connection with the Government. He asserts that from the outset the policies of the bank have always been subject to political control. It was some nine years later in 1974 that BBMB set up as it wholly owned subsidiary in Hong Kong BMFL. BMFL was a deposit-taking company, entirely dependent on BBMB for funds by which it might finance lending to customers. Of BMFL the applicant was also a subscriber and, indeed, a non-executive director. Three years later, in 1977, BMFL began business, and in course of time it acquired as one of its major customers the now notorious Carrian Group of companies in Hong Kong. BMFL made to the Carrian Group a number of substantial loans, and one of the questions that has since arisen, and may be material to the criminal proceedings brought the applicant, is the question whether those loans were properly secured. **f**

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- a** In October 1982 the Carrian Group announced that it was suffering from liquidity problems, and there were instituted thereafter a number of rescue operations to try to save it from collapse. A person sent by the chairman of BBMB called Jalil Ibrahim, for the purpose of investigating the affairs of the Carrian Group, was murdered in Hong Kong. That resulted in an investigation by the Serious Crimes Group of the Hong Kong Police.
- b** The investigation of the Carrian Group also involved the Commercial Crimes Bureau of the Hong Kong Police which, in that context, was concerned also with BMFL. The investigation included raids on the respective offices of the Carrian Group and BMFL. After the material seized in those raids had been analysed, the Commercial Crimes Bureau evidently made a decision not to continue with the investigation, at any rate so far as it concerned BMFL, and in particular not to proceed with any prosecution of that company.
- c** Meanwhile in Malaysia, the Government having refused to appoint a Royal Commission, BBMB itself set up what became known as the Noordin Committee of Inquiry. That committee was set up in April 1984. In August it submitted to the board of BBMB an interim report which was released to the press without one of its appendices which is said to have been critical of BBMB, but the investigations of the Noordin Committee continued, and the first result was the submission to BBMB in November 1984 of a brief relating to a loan of US\$40 million. Also submitted at about that time were briefs relating to a loan of US\$7.5 million, and also on the topic of corruption.
- d** In April 1985 those special briefs were received by the ICAC in Hong Kong, and immediately afterwards BBMB, and indeed BMFL as the relevant local entity, lodged a complaint with ICAC arising out of those briefs, with the result that the ICAC commenced their own investigations. It was in May 1985 that the Noordin Committee submitted, at any rate to BBMB, a special brief relating to a loan of US\$292 million, and later in the year a further brief called "Special Brief No. 2" on loans totalling US\$580 million to BBMB.
- e** During the latter part of 1985 it appears that there were talks going on about the prospective prosecution arising out of the matters referred to in these briefs. They resulted in the laying of an information against the applicant in Hong Kong on 30 November 1985.
- f** The taking of that course constituted, as will be obvious, a reversal of the Hong Kong authorities' earlier decision not to proceed with criminal charges against BMFL or those concerned with it.
- g** It is right to say in regard to the information against Mr. Osman that in general terms his defence is that his roles, both in BBMB and BMFL, were non-executive in character, with the result that he had no part in the day to day management and, so far as he knew, BBMB both authorised and approved of all the relevant activities of BMFL, without demurring at any action taken by its subsidiary which is relevant for present purposes.
- h** It is an essential part off the applicant's case in the outstanding *habeas corpus* application that the Malaysian Government could very well, had it seen fit, itself have prosecuted, or caused a prosecution to be brought against, the applicant in Malaysia, but that it decided for political reasons to lodge the complaint in Hong Kong, that resulted in the institution of the criminal proceedings there to which I have referred.
- i** The applicant complains that, were the prosecution in Hong Kong to be continued against him, he would suffer injustice, and his defence would be jeopardised for several reasons relating to the connection of the affair with Malaysia. First, he says that all the key witnesses

for the defence are there, and they might not be induced voluntarily to go to Hong Kong, whereas they would be compellable to give evidence had proceedings been taken against him in Malaysia.

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Secondly, he says that many prosecution witnesses are in Malaysia, with the result that the prosecution will seek, with any necessary leave of the Court of trial, to give their evidence by way of depositions or other evidence taken in Malaysia. If that occurs the applicant says that those witnesses will not have been cross-examined either in his presence or, more to the point, in the presence of the jury that tries him.

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Thirdly, he says that there are many important documents which the defence would wish to rely upon that are held in Malaysia, for example, by BBMB, and there would be difficulty in procuring the production of those documents, were the trial to proceed in Hong Kong.

The way in which it is sought to implicate Hong Kong or its Government in these difficulties is by alleging that the Hong Kong Government was aware of political pressures to which the Malaysian Government felt subject, and the suggestion made is that it was in consequence of pressures from the Malaysian Government that the Hong Kong Government was induced to proceed with the prosecution against Mr. Osman, contrary to its earlier decision not to do so.

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In short, it is said that the Hong Kong Government, by this route, shared the political motivation of the Malaysian Government when it determined to proceed in Hong Kong with the prosecution of the applicant, and on that account it is said that the accusation made against him in the form of the charges brought and, indeed, the decision to prefer such charges, were not made in good faith in the interests of Justice.

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It should be mentioned that the applicant has made in Hong Kong efforts to procure the production of the documents which he feels he needs for his *habeas corpus* proceedings, but that application was resisted upon the basis that it was before this Court that such an application had better be made.

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Similarly, an application was made in Hong Kong intended to require Mr. Philip Layton to give evidence adjudged by the applicant to be material to his *habeas corpus* proceedings. It should be said that the reason for Mr. Layton's involvement was the fact that he was in charge of the Commercial Crimes Bureau and so was responsible for the investigations into the Carrian Group and BMFL, and may be taken to have been aware of, or privy to, the decision originally taken not to prosecute officers of BMFL, including Mr. Osman. That application was similarly opposed upon the footing that it was before this Court that such an application should be made, and the application in Hong Kong was accordingly dismissed.

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The schedule to the letter of request expands upon the suggested relevance of any evidence that Mr. Leighton could give. It is said that he must have known about the execution of search warrants that I have referred to in the raids on premises of BMFL and the Carrian Group, and that he would have known of nature and purpose of the initial investigation of BMFL and its involvement with the Commercial Crime Bureau. He will have known the details of that investigation and the circumstances in which decisions not to prosecute may have been taken. He may also know of any information relating to the reopening of the investigation into the affairs of BMFL, although it is right to say that, so far as the evidence now before the Court goes, that renewal of inquiries was conducted by the ICAC rather than the Commercial Crimes Bureau.

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a I think it does Justice to the suggested relevance of any evidence which Mr. Layton might be able to give to say that it recalls a submission made in a somewhat different context by Mr. Thomas in course of this application, that “the climate is such that the applicant ought to be permitted to investigate the file”.

b There are two certificates claiming public interest immunity that, were that claim to become relevant, it would be necessary to consider in more detail, but in the context of disclosure Mr. Thomas refers to both of them for such light as they shed upon the documents, or the contents of documents, that may be in the possession either of the Hong Kong Government or of the Foreign and Commonwealth Office. So far as the former is concerned, the Acting Chief Secretary says in para. 7 of his certificate that he objects to the disclosure of the documents that fall within the relevant category because:

c (a) Communications concerning relations, dealings or negotiations between the Governments of the United Kingdom, Hong Kong and other sovereign states should be confidential as their disclosure would:

(i) prejudice relations between Her Majesty’s Government, the Government of Hong Kong and sovereign states;

d (ii) affect the freedom of communication between Her Majesty’s Government, the Government of Hong Kong and sovereign states.

(b) Documents touching upon specific matters of policy of Her Majesty’s Government and the Government of Hong Kong in relation to another sovereign state should be confidential as their disclosure may:

e (i) injure diplomatic relations;

(ii) embarrass the Governments concerned; and

(iii) disrupt the ability of the diplomatic service to perform its duties effectively.

In the Schedule A appended to the certificate it can be seen that all but 11 of the 56 documents specified in the schedule are said to be within that category.

f In a similar certificate on behalf of the Foreign and Commonwealth Office, Mr. Francis Maude has said at para. 4, in claiming immunity for two classes of documents, that they are “communications concerning relations, dealings or negotiations between the Government of the United Kingdom and other governments and upon the basis that the disclosure of such documents might prejudice relations between Her Majesty’s Government and an overseas government...”

g In para. 5 he says: “Similarly, I regard it as most important that Her Majesty’s Government should be able to withhold from production any documents which show how or why the United Kingdom Government came to decide upon a specific matter of policy in relation to another country. The production of such documents would be likely to injure diplomatic relations with that country. Disclosure of such documents would also impair the external relations of Her Majesty’s Government because it would reveal confidential communications between the Foreign and Commonwealth Office and members of the British Diplomatic Service posted abroad.”

h Finally, so far as relevant, in para. 6 Mr. Maude objects to disclosure of the documents in the third and last category “by virtue of their being communications relating to the request for or the giving of advice and information with regard to the prosecution or potential prosecution of offences or relating to matters of policy regarding the conduct of such

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proceedings. By reason of their nature and purpose”, he says, “I regard it as necessary for the proper administration of Justice that such communications should be withheld from production.”

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At the outset of a consideration of Mr. Thomas’s argument it is pertinent to recall two concessions which, in my judgment, he unavoidably made. Both of them highlight inherent weakness in the application. The first was that the Hong Kong Government had and has jurisdiction to prosecute the applicant. The second was that the test for ordering discovery, such as is here sought, is whether the documents concerned would be likely to advance the applicant’s case, and that it is for him to show that.

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In that context the Court must be careful not to indulge in speculation, but to see to it that there is a sound basis for believing that the documents concerned will advance the applicant’s case before it makes any order resulting in the inspection of them by the Court. It must be borne in mind that an application, as Mr. Nicholls has submitted, cannot be made for the purpose of making good supposed defects in the applicant’s evidence, nor yet for the purpose of studying the respondents’ documents in order to see if there is anything in them that will help the applicant’s cause.

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Mr. Thomas at the outset of his submissions explained the three main bases for the application, and he expressed them upon an assumption that Mr. Nicholls might succeed in establishing that the person making the accusation is to be regarded as the Hong Kong Government or its Attorney-General.

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Mr. Thomas contends (1) that the documents disclosed establish that the Hong Kong Government knew that the complaint by the Malaysian Government was made in Hong Kong for collateral political purposes and therefore not in the interests of Justice; (2) that when the Hong Kong authorities decided in 1985 to prosecute, they were reversing their previous decision not to do so in so far as BMFL was concerned in the affairs of the Carrian Group; and (3) that the certificate suggests that the decision to prosecute the applicant was a specific policy decision in relation to Malaysia which was so important as to be likely to injure diplomatic relations with Malaysia, or to embarrass that Government.

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Mr. Thomas points to negotiations that are seen to have taken place between the Government of Hong Kong and the Malaysian Government, which, he remarks, appear to have been so sensitive as would make the revelation of them prejudicial to the dealings between the United Kingdom and Malaysian Governments. He contends that such negotiations can only have been about the political implications of prosecuting the applicant in Hong Kong, and that they must have been concerned with co-operation to that end between those Governments. His submission is that of the Hong Kong Government could not have brought proceedings without the help of the Malaysian Government and that in those circumstances the Hong Kong Government cannot but have known that the Malaysian Government was itself motivated by political consideration. Moreover, the Hong Kong Government knew of the procedural disadvantages that would ensue for the applicant were a prosecution to be conducted there, and their decision to proceed was taken notwithstanding the earlier decision not to continue with the investigation.

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Mr. Thomas developed the reasons why the applicant says it would not be in the interests of Justice if a prosecution were to proceed in Hong Kong rather than in Malaysia, and he emphasised the lack of opportunity that any Hong Kong jury would have of seeing witnesses who might give their evidence in Malaysia. It is his burden of submission in this context that everything relevant happened in Malaysia, but it has to be recollected that the prosecution incontrovertibly affects the affairs of a deposit-taking company licensed in Hong Kong which

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a was operated there and made its relevant loans there to Hong Kong companies. It is as a result of those facts that the Courts of Hong Kong admittedly have jurisdiction.

b Mr. Thomas also referred to Mr. Warwick Reid, whom I have already mentioned. It is said that Reid had been offered a substantial bribe for desisting in the investigation or prosecution of an offence in 1985 and, since it was he who apparently took, or was party to, the decision to give immunity to the principal prosecutor against the applicant, the circumstances in which that immunity was given ought to be investigated. As to that, the retort is made that Mr. Warwick Reid is in Hong Kong, and there seems no immediate likelihood of his ceasing to be there. However, evidence has been given on affidavit that there was no investigation into any allegation made against Mr. Warwick Reid which concerned BMFL, nor was there any evidence of any involvement by him with that company.

c Mr. Thomas places substantial reliance upon the documents, nine in number, that were disclosed to the applicant in previous *habeas corpus* proceedings. Having regard to their nature, Counsel refrained from reading the documents aloud in Court, and I shall refrain from referring in any way to their contents, although I would not wish it to be supposed that I have not paid particular regard to them in reaching the conclusion that I have in relation to this application.

d In my judgment, as soon as it is established that the Hong Kong Government has jurisdiction to prosecute the applicant in respect of what they say were substantial frauds involving loans to companies in Hong Kong, it becomes exceedingly difficult to impugn either the decision to prosecute or the motive with which that decision was taken.

e As Mr. De Haan submitted, on behalf of the first respondents, since there is evidence that offences were committed in Hong Kong, there is on the face of it a legitimate public interest in prosecuting him there in respect of those offences. In those circumstances it would matter not if the Malaysian Government in fact had an ulterior political motive in having prompted the renewed investigation in Hong Kong of the applicant's conduct. Though the original investigation had indeed been laid to rest, it was properly and understandably renewed when the fruits of the Noordin Committee started to be received in Hong Kong, and the inquiries there were taken up by the ICAC.

f That claims for personal interest immunity were made in the language to which Mr. Thomas has pointed does not justify any inference that the Governments concerned, and in particular the Hong Kong Government, had something to hide. There are, as Mr. Richards for the Foreign and Commonwealth Office remarked, many reasons for seeking to preserve immunity for classes of documents of the kind here in question.

g In my judgment, having carefully perused the documents which the applicant seeks to use as a springboard for further discovery, and taking account of Mr. Thomas's arguments, there is nothing to show or suggest that the Hong Kong Government had any other motive in proceeding against the applicant than his prosecution for crimes alleged to have been committed by him for which the Courts of Hong Kong admittedly have jurisdiction to try him.

h None of the documents exhibited contain, nor do they point to the existence of other documents likely to contain, anything to suggest that the accusation against the applicant was not made in good faith in the interests of Justice.

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Those considerations apply equally to the letter of request in respect of Mr. Layton. There is no more ground for obtaining evidence from him about the circumstances in which the applicant was investigated by the ICAC than there is for obtaining disclosure of documents relating to them. The applicant was merely intent on trying to establish that the accusation against him was not made in good faith by the Government in Hong Kong by imputing to that Government political motives of which he suspects the Government of Malaysia. For that there is no warrant, and I would dismiss both applications.

I would only add that this is a case in which the Court has unfortunately had occasion to complain of the total failure by the solicitors concerned to comply with the Court's directions as to the timely lodging of papers. Unless there is such compliance in future the Court may be obliged to have personal recourse against the offenders.

Mr. Justice Nolan: I agree with the judgment that has been given.

Also found at [1990] 2 CLJ 529

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